IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 658 (MS) OF 2001

1. Sri Surendra Kumar
2. Sri Birendra Kumar,
3. Sri Sanjai Kumar,
4. Sri Arun Kumar, All sons of Sri Bishambhar Prasad, R/o Mohalla Majra Prabhu, Ward No. 2, Bajpur, District Nainital.

.....Petitioners.

Versus

1. State of U.P., through Collector, Nainital.
2. Commissioner, Kumaon Division, Nainital.
3. Prescribed Authority (A.D.M. Vitta and Rajaswa), Nainital.
4. Sri Padam Ravinderjeet Singh, S/o Brigadier Gurdeep Singh, R/o Village-Narkhera, Tehsil-Bajpur, District Nainital. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi, Advocate for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the orders dated 09.02.1995 and 27.06.1994 (Annexures No. 6 and 5 to the writ petition).

Briefly stated, on 15th January, 1993 and 12th July, 1993, petitioners have purchased the land belonging to Subha Singh in two lots by virtue of the sale deed executed by him and according to the petitioners, they are in cultivatory possession. The land is comprised in Khata Plot No. 172 C with an area of 28 Bighas and 9 Biswa.

According to the case of the petitioners, Sri Bhagat Singh was the original owner of the land, who executed the sale

deed in favour of Sri Suba Singh on 18th November, 1983 who was declared as a Bhumidhar.

Ceiling proceedings were started against Sri Padam Ravindrajeet Singh/respondent no. 3 in respect of the land held by him.

Various objections were filed under Section 11 (2) of the U.P. Imposition of Ceiling on Land Holdings Act stating therein that they are in possession of the land held by them and their lands are outside the purview of the ceiling limit.

Petitioners have come to know that their land has been included in the ceiling proceedings against Sri Ravindrajeet Singh and they applied and obtained the copy of the Khatauni from which it revealed that 13 Bighas of land belonging to the petitioners has been included in the ceiling proceedings as the land belonging to Sri Padam Ravindrajeet Singh/respondent no.3.

Grievance of the petitioners is that since the land originally belong to Bhagat Siongh, who sold the same to Suba Singh and hence the petitioners should have been heard before the land was declared surplus.

The petitioners have preferred objections under Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act stating therein that there has been a litigation between Padam Ravindrajeet Singh and Bhagat Singh and the matter went up to the Apex Court and the Apex Court has passed the order to the following effect:-

"A large trust of land become the subject matter of a proceedings under section 145 Cr. P.C. and on attachment become custodian legis. The learned magistrate found possession in favour of the respondents, whereupon the appellant approached the Sessions Judge under section 397 of the Code of Criminal procedure to have the order revived. The sessions Judge did not finally dispose of the revision but remitted the matter to the original forum. Thereupon the respondent filed a revision petition before the High Court. The High Court came to hold that the order remitting the

proceedings was not correct. Ordinarily in such a situation the sessions Judge has to hear the revision again.

We would not have entertained a matter of this type because the Sessions Judge was yet to deal with the revision and whatever final order was passed by him was subject to decision in a suit. The litigation between the parties appears to be continuing over two decades and without any appropriate justification. Several courts-Civil, Criminal and revenue are being called upon to look into different facts of the litigation. At the moment there is proceedings pending in the High Court at Allahabad and several revenue proceedings have been initiated which have really no justificable base. Ion a dispute between the parties it has been finally decided that upto June, 1960 the relationship between them was that of principal an agent, the respondents having been conducteds into the property to manage the same as Agent. The dues of the appellant under the decree of the High Court have been paid in 1984. After 1960, the respondents started claiming tenancy. Though there have been several miscellaneous proceedings where the claim of tenancy has been raised, yet there has been no clear adjudication of tenancy and provided by law. The respondents instituted some time after a suit under section 6 of the Specific Relief Act on the allegation that they have been dispossessed by the appellant. During the pendency of this suit, on the basis that they had recovered possession by force, they did not went to continue the suit. The trial Court did not accept the prayer and dismissed the suit on the ground that they were not entitled to claim relief under section 6 of the Act. Subsequently dispute arose to possession of the property leading to apprehension of the peace in the locality which led to initiation of proceedings under section 145 Cr. P.C. out of which this appeal arises. It is well established in law that criminal courts have to honour decisions rendered by civil courts and on that principle, in view of the two decisions of the civil courts, possession of the on the basis of title and dismissed of their claim of restoration of possession should have been upheld.

Looking into the history of the matter and nature of the dispute between the parties, we are of the view that ends of jusices would be satisfied, if the respondents are given liberty to establish the claim of tenancy in the manner prescribed by law. We accordingly direct that within one month from today, if so advised, the respondents may institute the proceedings in the revenue court with jurisdiction claiming tenancy. In case such claim is lodged, parties should be given full opportunity to canvass their respective cases by producing documents and leading oral evidence and the court shall decide the case within six months from the date of

institution. On completion of the proceedings, the revenue officer shall report to the registry of this court that the proceedings have been finalized.

Until then the property would be in the hands of the receiver. The learned Magistrate shall find out whether the receiver has been managing the property properly. Since it is a vast tract of land, the learned Magistrate shall ensure that cultivation is carried on properly. In case the revenue court makes any interim order regarding possession, the same shall be given effect to; otherwise the interim arrangement under the receiver shall be continued till the disposal of the dispute in the revenue court. If no claim of tenancy is lodged as stated above, the appellant shall be entitled to move the magistrate to put him in possession of the property by terminating the receivership and make appropriate orders to ensure that such permission is not interfered with by the respondents.

The writ petition before the High Court is dismissed and any proceedings between the parties will not be proceeded with until determination of tenancy by the revenue court. The criminal revision before the Sessions Judge is dismissed."

In view of the aforesaid facts and circumstances, I see no reason to reject the objection filed under Section 11 (2) of the U.P. Imposition of Ceiling on Land Holdings Act without deciding the same on merits.

Relying upon the Full Bench in ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor 1969 R.D. 202,*** it has been observed in ***Dilbag Singh Vs. State of U.P. and others (H.C.)1978 RD Page 230*** as under:-

"In view of the rival submission on the first question, the controversy gets considerably narrowed. In the Full Bench case of Upper "Ganga Mills Ltd. (supra) in paragraph 20 the Full Bench held-

"The position, therefore, is that under the definition of the term 'tenure-holder' and the scheme of the Act the holder of a holding has to be considered to be a tenure-holder, whether or not he is recorded as such in the revenue records and there is nothing in the provisions of the Act that precludes his form the

right of filing an objection to the statement issued by the Prescribed Authority to another person."

Section 11(2) and 11(3) of the Act provide-

"*(2) The Prescribed Authority shall, on application made within thirty days from the date of order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence set aside the order and allow such tenure-holder to file objection against the statement prepared under Section 10 and proceed to decide the same in accordance with the provisions of Section 12.*

(3) Subjection to the provisions of sub-section(2) and Section 13, the order of the Prescribed Authority shall be final and conclusive and be not questioned in any court of law."

Dealing with sub-section (2) the Full Bench in paragraph 27 held that there appears to be no valid reason why the benefit of Section 11 (2) may not be available to every8 tenure-holder and why Section 11(2) should be regarded as limited to those tenure-holders only who have been served with a notice under Section 10(2). It went on to hold-

"*In my opinion, the words 'a tenure-holder aggrieved by such order' embrace even those tenure-holders who have not been served with a notice under Section 10(2) and their scope is no manner curtailed by the words passed in hs absence and on sufficient cause bering shown for his absence'. A tenure-holder who has not been served with a notice and has also not been made a party would be treated as having been absent and the fact that he was not a party would itself sufficiently account for his absence. Section 11(2) should not, to my mind, be interpreted as withholding its benefit from a person who has committed no default at all while extending it*

to a person who has committed a default but furnishes. Sufficient case for it."

It is thus evident that Section 11(2) permits tenure-holders to file objections. Such tenure-holders may be those who have been served with a notice and the statement under Section 10(2). It also includes tenure holders who have not been given or served with any such notice or statement. The construction put by the Full Bench on Section 11 (2) embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other persons, wish to challenge that declaration or notification thereof in the gazette under Sec. 14. They are all entitled to file an objection under Section 11 (2) and get an adjudication thereon as required by Section 12.

Section 9 to 13 are in their operation and effect independent of Section 14(3) to (7). Even though sub-sections (3) to (7) of Section 14 were on the statute book, yet the Full bench took the view that a tenure-holder would be entitled to file an objection under Section 11(2) even though he had not been given any notice. The legislature would be presumed to have this decision in its mind when it repealed sub-sections (3) to (7) Section 14 but did not touch the provisions of Section 9 to 13, by excluding from their purview, persons who claimed to be tenure holders, but who had not been served with a notice or statement under Section 10(2). In substance the repeal of Section 14(3) to (7) takes away the right of a lessee from a tenure-holder, to be heard."

A writ of certiorari is issued quashing the order dated 09.02.1995 and 27.06.1994 (Annexures No. 6 and 5 to the writ petition).

In view of the above, the matter is sent back to the Prescribed Authority for decding the objections under Section

11(2) of the U.P. Imposition of Ceiling on Land Holdings Act in accordance with law.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

05.07.2006

Rathour